



China Regulatory Updates

August 2012

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- ▶ Standardization
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- ▶ Professionalism
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■ INSURANCE / 保险

CIRC Introduces Multiple Rules to Promote Marketization of Insurance Funds

保监会多举措推动保险资金市场化改革

■ LABOR LAW / 劳动法

China Sets to Tighten up Administration of Labor Dispatch Arrangements

全国人大常委拟修订劳动合同法、严格规范劳务派遣

■ TAXATION / 税收

SAT Prohibits Deemed/Fixed Rate of Income Tax for Corporate PEs

国税总局发文禁止公司制 PE 核定征收所得税

Shanghai Office
Suite 1801, Tower I, Huayi Plaza
2020 West Zhongshan Road
Shanghai 200235, China
Tel: (86-21) 6083-9800
Fax: (86-21) 6083-9811

Beijing Office
Suite C203-5A
Lufthansa Centre Office Building
Beijing 100125, China
Tel: (86-10) 6410-5322
Fax: (86-10) 6410-5322

INSURANCE / 保险

CIRC Introduces Multiple Rules to Promote Marketization of Insurance Funds

保监会多举措推动保险资金市场化改革

Over the past month, China Insurance Regulatory Commission (the "CIRC") has promulgated multiple rules, including, among others, the *Interim Measures on Bonds Investment with Insurance Funds* (the "Bond Measures"), the *Interim Measures on Administration of Entrusted Investment with Insurance Funds* (the "Entrusted Investment Measures") and the *Circular on Certain Issues Concerning the Equity Investment and Real Estate Investment with Insurance Funds* (the "Equity and Real Estate Measures"), as part of its effort to speed up marketization of insurance funds. According to CIRC, it is also working on additional administrative rules concerning allocation, outbound investment, derivatives etc. with respect to insurance funds and insurance assets, which are expected to be released in recent months.

In comparison with the *Interim Measures on Equity Investment with Insurance Funds* and the *Interim Measures on Real Property Investment with Insurance Funds* that have attracted wide attention upon its issuance in 2010, the Equity and Real Estate Measures have lifted certain eligibility requirements for the equity investment and real property investment by insurance companies (e.g. the probability requirement of such insurance companies is removed and the minimum net asset value of an insurance company to be directly engaged in equity investment is now decreased from RMB1 billion to RMB100million), raised the maximum ratio of the investment amount to total asset from 5% to 10%, and expanded the scope of the equity investment with insurance funds (which explicitly includes such private equity funds as growth funds, buyout funds, emerging strategic industry funds, and FOFs, among others).

The Entrusted Investment Measures allowed insurance companies to choose security companies and fund management companies, in addition to the insurance fund management companies, as their entrusted investment management agents. This would provide more choices to those small and medium sized insurance companies who are developing rapidly while in the meanwhile lacking in adequate investment capabilities.

The Bond Measures have primarily lifted restrictions on bond investment with insurance funds in the following aspects: (a) adding the hybrid bonds and convertible bonds to the permitted investment scope applicable to insurance companies, thus the insurance funds could be used to invest in almost all sorts of publicly issued bonds that are available in the market; (b) lifting the maximum investment ratio applicable to unsecured bonds, and (c) adding book building method as an alternative bond issuance method in addition to the public tender offer process.

近一个月以来,中国保监会先后发布并实施了《保险资金投资债券暂行办法》(“《债券办法》”)、《保险资金委托投资管理暂行办法》(“《委托投资办法》”)和《关于保险资金投资股权和不动产有关问题的通知》(“《股权和不动产办法》”),以系统性地深化保险资金运用市场化改革。除了上述规则,新政策“组合拳”还将包括资产配置办法、境外投资、融资融券、衍生品等相关的规定,将择机发布。

与保监会于2010年颁布的《保险资金投资股权暂行办法》和《保险资金投资不动产暂行办法》相比,《股权和不动产办法》降低了保险公司投资股权或不动产的投资门槛(如不再要求其上一会计年度盈利,将上一会计年度净资产要求均调整为1亿元人民币)、提高了可用于股权和不动产投资的资产比例、并扩大了保险资金进行股权投资的范围(可投资成长基金、并购基金、新兴战略产业基金和以上股权投资基金为投资标的的母基金等)。

《委托投资办法》在现行保险公司可以委托保险资产管理公司进行投资管理的基础上,增加证券公司和基金公司作为保险资金受托投资管理机构,为保险业务发展较快、但投资能力相对不足的中小保险公司的资产管理提供了更多市场化的选择。

《债券办法》则放松了保险资金进行债券投资的部分限制,比如增加了债券投资品种(新增了混合债券和可转换债券,可投资品种基本覆盖了现有市场公开发行的品种),调整投资比例(提高了无担保债券投资上限),并适度放宽了发行限制(在原有公开招标方式的基础上,增加了簿记建档方式)。

LABOR LAW / 劳动法

China Sets to Tighten up Administration of Labor Dispatch Arrangements

全国人大常委拟修订劳动合同法、严格规范劳务派遣

The Standing Committee of the PRC National People's Congress has recently released the *Draft Amendments to the PRC Labor Contract Law* (the "Draft") to solicit public comments, with an intention to tighten up administration of labor dispatch arrangements which have been widely adopted by employers after implementation of the Labor Contract Law back in 2008. The Draft mainly contains the following proposed new rules:

- (a) Raising eligibility requirements for companies providing labor dispatch services by adding such requirements as a minimum registered capital of RMB1 million and an administrative permit from competent labor administration authority prior to the establishment of such labor dispatch companies;
 - (b) Specifying that only those job positions of a temporary (i.e., positions with a service term of which should not be longer than six (6) months), supportive (i.e. positions providing support to primary business positions), or substitutive (i.e., positions providing substitution for the employees taking temporary leaves) nature can be taken by dispatched employees;
 - (c) Reaffirming that a dispatched employee shall be equally paid with non-dispatched employees assuming similar positions, which shall be duly reflected in the relevant labor contract and labor dispatch agreement in accordance with the Labor Contract Law;
 - (d) Increasing legal liabilities for labor dispatch companies and the actual employers for their violation of the Labor Contract Law in terms of the underlying labor dispatch arrangements, such as imposing a fine ranging from RMB5,000 to RMB10,000 per dispatched employee on the labor dispatch company and/or the actual employer if they severely violate the Labor Contract Law, and providing that the labor dispatch company and the actual employer should be jointly liable for damages caused to the dispatched employee due to the violation of the Labor Contract Law by either of them.
- 近期，全国人大常委会公布了《中华人民共和国劳动合同法修正案（草案）》（“草案”），向社会公开征集意见，拟对《劳动合同法》实施之后数量和规模大增的劳务派遣单位及劳务派遣用工情况进行规范。《草案》的主要内容如下：
- (a) 提高劳务派遣单位的设立门槛，要求注册资本不低于100万人民币，并要求劳务派遣单位在设立之前取得劳动行政部门的行政许可；
 - (b) 进一步限制劳务派遣用工的岗位范围，明确劳务派遣只能在临时性（存续时间不超过六个月）、辅助性（为主营业务岗位提供服务）或者替代性（为一定期限内在工作岗位上无法工作的单位员工替代工作）的工作岗位上实施；
 - (d) 强调被派遣劳动者同工同酬的权利，要求劳动合同以及劳务派遣协议载明或约定的向被派遣劳动者支付的劳动报酬应符合《劳动合同法》中同工同酬的规定；以及
 - (d) 加重了劳务派遣单位、用工单位违反《劳动合同法》应承担的法律责任，比如对于严重违法规定的劳务派遣单位和用工单位按照每人五千元至一万元处以罚款；给被派遣劳动者造成损害的，劳务派遣单位与用工单位承担连带赔偿责任等。

TAXATION / 税收

SAT Prohibits Deemed/Fixed Rate of Income Tax for Corporate PEs

国税总局发文禁止公司制 PE 核定征收所得税

The PRC State Administration of Taxation (the "SAT") has recently issued the *Notice on Several Questions Concerning Collection of Enterprise Income Tax Based on Deemed Profit Rate* (the "Notice"). According to the Notice, enterprises specialized in equity (stock) investment business (or PEs) shall not be entitled to the deemed-profit-rate-based income tax collection mechanism,

近期，国家税务总局发布了《关于企业所得税核定征收若干问题的公告》及相关解读，规定专门从事股权（股票）投资业务的企业，不得核定征收企业所得税，主要原因在于该等企业拥有专业财务团队，具备建账核算的能力，且股权

on the rationale that PEs are normally staffed with professional teams that are experts at bookkeeping and accounting matters, and the investment transactions engaged in by PEs are relatively easy to be tracked.

The Notice may greatly increase tax burdens for corporate type of PEs, and it is reported that some of them have started to explore alternative measures (e.g., restructuring into partnership type of PEs) to avoid application of this Notice. Implementation of the same tax law and policies could vary dramatically in different localities of China and this has long been a major concern of many PEs. To attract more PEs and PE investments, many local governments used to offer various tax incentives, some of which are essentially contrary to the national tax laws and regulations. Issuance of this Notice will to some extent help clear up the aforesaid chaos caused by conflicting and ambiguous local tax policies.

(股票)交易痕迹较为明显, 比较容易核算清楚。

该公告可能大幅提高公司制PE的税负, 迫使一些公司制PE寻求避税途径(比如改制成合伙型PE等)。据了解, 各地税收政策不一致、实际执行情况复杂等是目前股权投资企业所面临的主要问题之一。不少地方政府为吸引PE落户, 出台了各种可能有悖于国家政策的税收优惠政策(包括对PE适用较低的核定应税所得率等), 公告的出台将有助于整顿和清理实践中各地混乱的税收政策。

For further information, please write us at inquiry@hanyilaw.com.

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